



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline Massachusetts

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BUILDING DEPT.
TOWN OF BROOKLINE

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080050

Petitioners, Charles and Arisa Boit, applied to the Building Commissioner for permission to install fences up to ten feet in height in the rear yard of their property at 351 Clark Road. The application was denied and an appeal was taken to this Board.

On November 20, 2008 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed December 11, 2008 at 7:15 p.m. on the 2nd floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on November 20 and 27, 2008 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **BOIT, CHARLES FD AND BOIT, ARISA**

Location of Premises: **351 CLARK ROAD BRKL**

Date of Hearing: **12/11/2008**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Main Library, 2nd. floor**

A public hearing will be held for a variance and/or special permit from:

5.74; Fences and Terraces in Rear Yards, Variance Required of the Zoning By-Law to install fences up to ten feet in height in the rear yard per plans at **351 CLARK ROAD BRKL**.

Said Premise located in a **S-7** (single family) district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members, Kathryn Ham and Rob De Vries. The petitioners, were represented by their attorney, Jeffrey Allen, of Seegel Lipshutz & Wilchins LLP, 20 William Street, Suite 130, Wellesley, MA 02481-4110.

Mr. Allen described the case: 351 Clark Road is located at the corner of Clark Road and Dean Road. The rear lot line abuts MBTA trolley tracks, and is close to the Beaconsfield. The house is a two story colonial single family house with a garage located 9' from the rear lot line. The rear portion of the

yard slopes steeply down toward the trolley tracks. A wooden privacy fence bisects the rear yard; the flat portion of the yard houses a swingset and other play structures and is separated from the steep slope by the fences. The sloping portion of the yard leads down to a wire fence that separates the Boit's yard from the trolley tracks. There is also a privacy fence on Dean Road that screens the rear yard because Dean Road is at a higher grade than the rear yard. As a result, the entire backyard is visible and accessible from the sidewalk and bridge over the tracks on Dean Road.

The applicant, David Boit, is proposing to install cedar fences ranging from 6'-10' in height following the grade of the rear yard. The fence will be 10' where it meets the 10' fence that runs along Dean Road, and will slope down toward the garage. The applicant is proposing to raise the height of the fence as the gap between the Dean Road fence and the rear yard fence has created a security risk for the applicant and his family because the rear yard is easily accessible from the Dean Road sidewalk. The applicants are proposing to construct the fence of unstained cedar with structural steel supports.

Mr. Allen explained that the relief necessary was a variance from the provision in the zoning by-law limiting the height of fences to six feet. With regard to the requested variance, Mr. Allen stated that literal compliance with the requirements under the zoning by-law is not feasible in light of the existing conditions at the lot, in particular, the topography of the lot. Mr. Allen stated that as a result of this unique character of the lot, failure to grant the requested variance would cause substantial hardship to the petitioner by preventing the petitioner from fully utilizing their property in a safe manner. Mr. Allen explained that the requested variance was particularly appropriate under the circumstances of this petition where the petitioner's fence, because of the slope of the property, would appear to be in compliance with the zoning by-law, while at the same time adding additional security and privacy to the homeowner. Mr. Allen urged the Board to support this variance which is, in his opinion, in full conformance to the state law setting forth the criteria for the granting of variances.

The Chairperson asked if any members of the public wished to be heard and no members of the public asked to address the Board.

Courtney Starling, Planner, provided the finding of the Planning Department.

Section 6.74 – Fences and Terraces in Rear Yards

	Maximum Height	Existing	Proposed	Finding
Rear Fence	6'	6'	10'	Variance

Ms. Starling reported that the Planning Board had no objection to the proposed installation of 10 ft. fence to make the fence even with the fence on Dean Road. Because the property is on a corner lot that slopes down to the trolley tracks which allows for pedestrians on Dean Road visual and physical access to the rear yard, the extra fence height is necessary for providing some semblance of privacy and security for the family. Further, many properties abutting the MBTA trolley easement for the D-Line typically have been granted relief from the Board of Appeals to install fences higher than 6' in the rear yard to screen their property from the trolley. Therefore, she said, the Planning Board recommended approval of the project in accordance with the plans by Antonopoulos Company Inc. dated September 12, 2008 with the following condition:

Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final elevations of the fences stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner, spoke on behalf of the Building Department. He restated the various sections of the zoning by-law under which relief is needed. Mr. Shepard stated that the

Building Department has no objections to the requested relief. He further stated that he will ensure that all state code provisions are satisfied.

The Board, having deliberated on this matter, considered the foregoing testimony and concluded it is desirable to grant all the relief requested by the Petitioner. The Board finds that the literal compliance with the requirements of the by-law is not feasible in light of the existing conditions at the lot in question. As a result of the unique topography of the steeply sloped lot, the failure to grant the requested variance would cause substantial hardship to the property owner. Granting the requested variance to permit a fence of more than six feet high will not be more detrimental to the public good, nor nullify, nor substantially derogate from the intent or purposes of the Brookline Zoning By-Law.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following condition:


Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final elevations of the fences stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals


Enid Starr, Chairman

Filing Date: January 13, 2009

True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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